

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NOS. 96-177-E & 95-1221-E - ORDER NO. 97-214
MARCH 18, 1997

IN RE:	Docket No. 96-177-E - Joint Applica-)	ORDER
	tion of Duke Power Company & Broad)	DENYING
	River Electric Cooperative, Inc. for)	COMPLAINT
	Assignment of Certain Service Areas)	AND DENYING
	in Cherokee County, South Carolina.)	ASSIGNMENT

AND

Docket No. 95-1221-E - Duke Power)
Company and Broad River Electric)
Cooperative, Inc.,)
)
Complainants,)
)
vs.)
)
Board of Public Works of the City)
of Gaffney,)
)
Respondent.)
)
)

This matter comes before the Public Service Commission of South Carolina (the Commission) on two matters. The first matter is the joint complaint of Duke Power Company (Duke) and Broad River Electric Cooperative, Inc. (Broad River or the Coop.) against the Board of Public Works of the City of Gaffney (the Board). The second matter is the Joint Application of Duke and Broad River for assignment of certain unassigned service areas in Cherokee County, South Carolina.

On February 3, 1997, this Commission issued Order No. 97-94 which summarized its findings and held at that time that based on the evidence presented, the complaint of Duke and Broad River against the Board must be denied, and the Emergency Order (Order No. 95-1684) issued on November 17, 1995, must be withdrawn. Further, the request for assignment of the unassigned territory by Duke and Broad River was denied. Order No. 97-94 then stated that we would issue an Order at a later time, whereby the Commission would fully explain its reasoning in this matter. This is that Order.

The Commission heard testimony in this matter from Duke, Broad River, the Board, and from various customers who state that they wished to be served by the Board. The purpose of this Order is to reiterate the findings of Order No. 97-94, and show our reasoning therefor.

William Larry Sheppard, the Manager of Power Delivery for Duke, testified that this is the third time that a dispute between these parties relevant to the same geographical area has been before this Commission. As noted by Sheppard, this matter has been ruled on by the South Carolina Supreme Court on two prior occasions. The genesis of this dispute goes all the way back to 1985. Numerous rulings have followed the original appearance of these parties before the Commission, but up to this time, nothing has been finally settled in this matter.

Duke states, that with regard to its joint complaint with Broad River against the Board, it is seeking this Commission's

guidance, clarification, and enforcement of Commission Order No. 93-271, dated March 23, 1993. Duke states that the Board has not complied with the spirit and the intent of this Commission's Order. Further, Sheppard notes that Duke, along with Broad River, is requesting that the Commission assign certain unassigned electrical service areas in Cherokee County, South Carolina in an attempt to bring to an end the long-standing and continuing litigation and disputes in that area.

It is noted by Sheppard that after receiving Order No. 93-271, the Board removed the 1985 electrical service line and immediately replaced them a few feet away, without interrupting service to the customers in dispute. Further, Sheppard states that the assignment of the territory to Duke and Broad River will prevent the continuing unnecessary and uneconomical duplication of electrical service lines and safety concerns attendant thereto, and would end the 11 years of litigation between these parties.

Duke notes that with regard to safety matters, the electrical service lines of the Board cross and recross the lines of Duke and Broad River repeatedly in the relatively compact geographic area in dispute. Duke states that there is unnecessary and uneconomical duplication of electrical service lines in the disputed area, given the location of the lines and facilities of all the electric providers, and that the duplication is costly to the citizens. According to Sheppard, Duke is capable of serving the customers in the area.

W. B. Cook, Manager of Administration for Broad River, testified also. Cook stated that the Board has acted in a manner inconsistent with the Commission Order of 1993, and that it intentionally used revenue bonds to disobey an Order of the Commission. Cook also believed that the public convenience and necessity would best be served by assignment of service areas around the City of Gaffney to Broad River and Duke.

Donnie L. Hardin, General Manager of the Gaffney Board of Public Works, testified as well. Hardin noted that the Board serves approximately 6,700 electric customers, including 23 industrial customers. Hardin noted that the Board originally constructed the power line along Highway 105 in late 1985 to serve Hamrick's, the retail clothing facility just north of the intersection of I-85 and Highway 105. Hamrick's had apparently requested the Board's service, and its establishment was located in unassigned territory. Hardin noted that that construction was also consistent with the Board's long range plans to loop that part of its system to enhance system reliability, and to enable the Board to satisfy additional requests for its electric service in an area in which it anticipated future growth. As Hardin noted, Duke and Broad River challenged the extension. Subsequently, three additional customers in the area requested the Board's service, including Mr. Johnny Cook and Mr. Charles A. Copeland, who also testified in this proceeding. Hardin then noted that after giving the customers notice of termination of electric service from the 1985 line, the customers continued to

request the Board's service. The Board then decided to construct a new line with bond funds. To be precise, the Board and/or the City issued system revenue bonds dated February 1, 1992, in accordance with the Revenue Bond Act for Utilities. Construction of electric system lines and facilities were financed by those proceeds. According to Hardin, the Board responded to its customers legitimate request by building a completely new line, which has a statutory exemption from certification requirements.

The Board also opposes the Application for assignment of the territory. The Board believes that Duke and Broad River are attempting to restrain competition from the Board for electric service to future customers outside Gaffney's municipal limits, and to limit the ability of the Board to grow and utilize effectively and efficiently its electric system. The Board notes that if the territory outside Gaffney is assigned, then the Board will not be able to serve customers in the territory assigned to those suppliers, and that this will further hinder the growth of the Board's electric system.

Hardin also noted that although there are electric lines of Duke, Broad River, and the Board in proximity with each other, and some portions of the unassigned area around Gaffney, those conditions are not new, and that each of the electric providers have constructed lines in proximity to the others without threat to safety of the customers or other persons. According to Hardin, each provider adheres to construction standards which meet good utility practice, and which are identical for each provider.

Further, Hardin is not aware of uneconomical wasteful duplication of facilities. He states that the Board does not engage in construction of lines and facilities which are not necessary for service to customers and enhance system reliability and security. Hardin denies that any of the Board's extensions have interfered with the services or systems of Duke or Broad River.

Fred Keller, Electrical Superintendent for the Board, also testified. Keller testified that the 1993 line involved different poles, lines, and facilities from those previously associated with the 1985 line, and that the construction to replace the old line was in order to minimize potential disruption for customers' businesses, and to build the new lines as economically as good engineering practices and safety considerations allow. According to Keller, when the project was completed in 1993, the Board had completely removed the 1985 line and built a new line and facilities. Keller reiterated the fact that the systems do not cause safety concerns, and that all lines, poles, and facilities were constructed with good engineering practices in mind, and with good business practices.

As stated above, customers Charles A. Copeland and Johnny Cook testified that they wish to have electrical service from the Board and did not want the service of Duke and/or Broad River.

We have examined the entire record in this case, including the testimony of all parties, and again must conclude that the complaint of Duke and Broad River must be denied, and the assignment of the unassigned territory in Cherokee County must

also be denied.

First, Duke and Broad River alleged that Order No. 93-271 is dispositive of this case, and that the Board has failed to comply with this Order of the Commission in acquiring customers in the disputed territory. We disagree. As may be recalled, our Order No. 96-193 stated that, although we found that Order No. 93-271 was still valid and was in full force and effect, we took no position at that time as to whether Order No. 93-271 was dispositive of the issues in Docket No. 95-1221-E. We hold at this time that that Order is not dispositive of those issues. Clearly, the Order referred to the 1985 extension, not the 1993 replacement line.

It should be noted that the Board obeyed Order No. 93-271, even though it replaced the 1985 line with a new line constructed in 1993. Therefore, Order No. 93-271 is simply not dispositive of issues surrounding the line built in 1993, and is of no force and effect with regard to issues surrounding the 1993 line.

With regard to the assignment of the unassigned territory, S.C. Code Ann. Section 58-27-640 (1976) notes that "the Commission shall make assignments of areas in accordance with public convenience and necessity considering, among other things, the location of existing lines and facilities of electric suppliers, and the adequacy and dependability of the service of electric suppliers...." The testimony in this case shows that the public convenience and necessity would be best served by leaving the unassigned areas unassigned. Clearly, existing lines and


facilities of Duke, Broad River, and the Board all exist in this area. There have been no complaints about the adequacy or dependability of any of the service, or of the safety of the suppliers or providers in this area. In addition, the testimony of two customers in the area shows that they prefer service from the Board, rather than from Duke or Broad River. We also note that in order to continue the completion of the electric loop desired by the Board, and to promote growth and competition in the area, it would appear to us that the area should remain unassigned. We therefore hold that the public convenience and necessity in this case mandates that the area be left unassigned.

IT IS THEREFORE ORDERED THAT:

1. The complaint of Duke and Broad River is denied because of the reasoning stated herein, and the Emergency Order withdrawn.
2. The Petition for assignment of the unassigned territory outside the city limits of Gaffney in Cherokee County by Duke and Broad River is hereby denied, because of the reasoning stated herein.

3. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director

(SEAL)